

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31318
Docket No. MW-31896
96-3-94-3-223

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employee R. McCranie to perform Track Sub-department work on December 21, 23, 27, 28 and 29, 1992, instead of recalling and assigning Mr. D. Matthes to perform said work (System File 1993-9/013-293-15)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Matthes shall be allowed forty (40) hours pay at the applicable rate of pay for the total number of man-hours expended by Mr. R. McCranie in the performance of the work in question."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On November 13, 1992, Claimant was furloughed. At that time he filed his name and address with Carrier for the purpose of retaining his seniority, recall to service, and protecting extra and relief work when available. On December 21, 23, 28 and 29, 1992, Carrier utilized a furloughed employee junior to Claimant, to perform track department work. The Organization filed the instant claim, contending that Claimant, as the senior furloughed employee,

should have been called for the work. Carrier contends that historically it has had in place a "Shine Board," whereby, available furloughed track employees show up daily, prior to 7:30, at the Madison Yard, to protect emergency, or last minute type work, that may become available on that date. In this case Claimant did not take advantage of the opportunity to show up for the "Shine Board." Instead he opted to protect only known in advance scheduled vacancies. Therefore, he was not called for work on the claim dates. The junior employee used, did show up on the claim dates to protect the "Shine Board." Accordingly, it was proper to work him, Carrier argues.

Notwithstanding contentions of the Organization that Carrier's reliance on the "Shine Board" are new arguments, never raised on the property before this matter was submitted to the Board, and therefore they cannot be considered, which contention is disputed by Carrier, with a showing that the "Shine Board" was mentioned in correspondence exchanged on the property, the evidence is conclusive that a practice has existed for over twenty years, whereby furloughed track department employees showed up prior to 7:30 each morning, at Carrier's Madison Yard, to protect any work that might become available on a day-to-day basis. If additional employees were needed on a particular day, they were selected, in seniority order, from those that had showed up that day. When Carrier used an employee junior to Claimant on the dates involved in this claim, he happened to be the senior employee that showed up for the "Shine Board" on those days. Use of an employee junior to Claimant, in these circumstances, was consistent with the prior practice of the parties on the property. Accordingly, it cannot be concluded that the Agreement was violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.